FILE COPY

Office - Supreme Court, U. S.
FILED
APR 27 1942
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1941

No. ~~1,080.~~ 59

CLAUDE R. WICKARD, et al,
Appellants

-vs-

ROSCOE C. FILBURN,
Appellee

PETITION FOR LEAVE TO FILE THE AMICUS CURIAE BRIEF HEREWITH AND HEREIN SUBMITTED AND FOR ORAL ARGUMENT IN THE ABOVE ENTITLED CAUSE.

ATTORNEYS AMICUS CURIAE

WILLIAM LEMKE, Fargo, N. D.
LOUIS M. DAY, Chillicothe, O.
HENRY PETZINGER, Canton, O.
EVA L. MINOR, Kankakee, Ill.
S. L. LAUCKS, York, Pa.
LEE R. DABBELT, Celina, O.
RICHARD R. KRUSE, Sandusky, O.
FRANK A. MEEK, Clay Center, Kans.
T. A. BILLINGSLY, Greenville, O.
CARL E. MOLLENBERG, Bowling Green, O.
NOBEL Y. DOWELL, East Peoria, Ill.
SAM HETZLER, Sidney, O.
RALPH HOFFMAN, Westminster, Md.
ROBERT ROULE, LaPorte, Ind.
MARSH & MARSH, Indianapolis, Ind.
ADDINGTON & JONES, Topeka, Kans.
GILBERT MARTIN, Norwalk, O.

KNIGHT PRINTING CO., FARGO, N. D.

INDEX

CASES CITED

Supreme Court of the United States

October Term, 1941

No. 1,088.

CLAUDE R. WICKARD, et al,
Appellants

-vs-

ROSCOE C. FILBURN,
Appellee

PETITION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND FOR ORAL ARGUMENT.

To the Honorable, the Supreme Court of the United States:

William Lemke, and associate counsel, petition this honorable court for leave to file the Amicus Curiae brief, herewith and herein submitted, in the above entitled cause.

This for the reason that petitioners are counsel in some thirty cases, in different states, involving the identical subject matter that is involved in the above entitled cause. The same questions of law and of the constitutionality of Public Law No. 74, and of Sections 331 to 339 inclusive of the Agricultural Adjustment Act as amended, are involved in all of these cases.

Petitioners call the court's attention to the fact that its decision in the above entitled cause will effect, and may in fact determine its decision, in all of the cases that petitioners are interested in.

The questions involved in these cases are of great public concern and interest. They are national in scope, and effect the agricultural activities of millions of farmers. They in-

volve millions of dollars of penalties, which we feel have been and are being unlawfully collected under an unconstitutional law.

It is for this reason that petitioners also respectfully request the court to grant them thirty minutes for oral argument on the constitutionality of Public Law No. 74, and Sections 331 to 339 inclusive, of the Agricultural Adjustment Act as amended, and to grant to the government's counsel the same amount of additional time if they desire it.

Petitioners feel that if they are permitted to participate by filing the Amicus Curiae brief herewith and herein submitted, and are granted thirty minutes for oral argument in the manner requested above, that it will aid the court in getting a clear picture of the questions of law and constitutionality involved, and will assist them in arriving at a final decision, which will dispose of all of the questions involved in the above entitled cause. This will eliminate the further litigation of cases involving the same subject matter.

Respectfully submitted,

ATTORNEYS AMICUS CURIAE

WILLIAM LEMKE, Fargo, N. D.
LOUIS M. DAY, Chillicothe, O.
HENRY PETZINGER, Canton, O.
EVA L. MINOR, Kankakee, Ill.
S. L. LAUCKS, York, Pa.
LEE R. DABBELT, Celina, O.
RICHARD R. KRUSE, Sandusky, O.
FRANK A. MEEK, Clay Center, Kans.
T. A. BILLINGSLY, Greenville, O.
CARL E. MOLLENBERG, Bowling Green, O.
NOBEL Y. DOWELL, East Peoria, Ill.
SAM HETZLER, Sidney, O.
RALPH HOFFMAN, Westminster, Md.
ROBERT ROULE, LaPorte, Ind.
MARSH & MARSH, Indianapolis, Ind.
ADDINGTON & JONES, Topeka, Kans.
GILBERT MARTIN, Norwalk, O.

Supreme Court of the United States

October Term, 1941

No. 1,080.

CLAUDE R. WICKARD, et al,
Appellants

-vs-

ROSCOE C. FILBURN,
Appellee

PETITIONERS' AMICUS CURIAE BRIEF

STATEMENT OF CASE

This case arises under Federal laws. It arises under the unconstitutional Public Law 74, and the unconstitutional sections 331 to 339, inclusive, of the Agricultural Adjustment Act of 1938, as amended. The provisions of these laws attempt to control intrastate agricultural activities and production, under the guise of regulating interstate commerce.

They do not deal with interstate commerce, nor even with intrastate commerce, as such, but deal solely and exclusively with intrastate production of wheat and farming activities.

Their aim is, the control and curtailment of the production of wheat. They do not operate on interstate commerce, interstate dealers, or even on intrastate dealers, but aim to control the farming activities of the farmer himself. They invade the rights of the state, attempting to regulate its internal affairs; they invade the private home of the farmer within the state, by directing him what he may plant, and

what he may not plant; what he may produce, and what he may not produce.

If held constitutional, they will divide and set community against community, state against state, and section against section. They may be the rock upon which the sisterhood of forty-eight states will ultimately perish.

We shall show that the production of wheat has no connection with interstate commerce, and that the statements of facts and conclusions contained in said laws, are erroneous, incorrect and untrue. We shall, however, discuss the legal propositions first.

CONSTITUTIONAL QUESTIONS INVOLVED.

I.

Violate Article 1, Section 8.

These laws are repugnant to Article 1, Section 8, in that they do not regulate commerce with foreign nations and among the several states, but in fact interfere with, hinder and tend to destroy said commerce. We repeat that their object is not to regulate commerce, but to control intrastate production and intrastate farming activities. They curtail and restrict the production of an essential food product, wheat, to the detriment of the general welfare of the nation. They cannot be sustained as constitutional under any decision of the Supreme Court.

It must be clear that these acts do not only interfere with Interstate Commerce, but tend to destroy it. If I raise ten sheep and my family consumes five and I sell five, then there are five for intra or interstate commerce, but if I am compelled to reduce the number of sheep I raise to five, then I have destroyed the commerce in the other five, be it state or interstate.

It is equally clear that if I raise one hundred bushels of wheat and my family consumes fifty, that then I have fifty bushels for commerce, but if I am restricted to only fifty bushels, then I have none whatever for either state or interstate commerce. These facts are so self-evident that they need no further explanation.

> "The Act invades the reserved right of the states. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the Federal Government * * *.
>
> From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such

as are conferred, are reserved to the states or to the people. To forestall any suggestion to the contrary, the 10th amendment was adopted. The same proposition otherwise stated, is that powers not granted are prohibited. None to regulate agricultural production is given, and therefore legislation by Congress for that purpose is forbidden." United States v. Butler, 297 U. S. 1. Linder v. United States, 268 U. S. 5.

"When defendants had made their purchases, whether at the West Washington Market in New York City or at the railroad terminals serving the City, or elsewhere, the poultry was trucked to their slaughterhouses in Brooklyn for local disposition. The interstate transactions in relation to that poultry then ended. Defendants held the poultry at their slaughterhouse markets for slaughter and local sale to retail dealers and butchers who in turn sold directly to consumers. Neither the slaughtering nor the sales by defendants were transactions in interstate commerce. Brown v. Houston, 114 U. S. 622, 632, 633; Public Utilities Comm'n v. Landon, 249 U. S. 236, 245; Industrial Association v. United States, 268 U. S. 64, 78, 79; Atlantic Coast Line v. Standard Oil Co., 275 U. S. 257, 267." Schechter Corp. v. United States, 295 U. S. 495.

If these acts are constitutional, then Congress can prohibit a carpenter from making a single lead pencil and either using it himself, or giving it to his wife as a birthday present. Then Congress can direct the number of eggs that a hen is allowed to lay per week. It can compel the farmer to dispose of, or give to the Secretary of Agriculture, any hen that lays more than three eggs per week. This, because some lead pencils and some eggs do enter interstate commerce.

If this law is constitutional, then Congress can prohibit any farmer from raising any wheat and using it for his own family and his own livestock. Absurd as this may seem, that is exactly what the Department of Agriculture is attempting to do under these acts. It is an attempt to penalize the farmer for raising wheat for seed, feed or for his family's consumption. It makes that a crime which is a virtue, it attempts to penalize and punish the farmer for feeding the nation.

In fact these acts do not attempt to regulate interstate commerce. It is their purpose to curtail interstate commerce of domestic wheat. It attempts to bring about this result not by regulating interstate commerce, *but by controlling acres of production. Surely an acre of land cannot be made the subject of regulating interstate commerce. The acre itself does not walk across boundary lines.* It is true that some of its soil occasionally takes an interstate excursion in a dust storm, but as far as we know the Department of Agriculture has not yet been able to regulate that.

The case of Mulford v. Smith, 307 U. S. 38, does not sustain these laws. The question before the court there was quite different from the one here under consideration. In that case, the farmer could sell all the tobacco he wanted, he could smoke all he wanted, publicly or privately, without interference or penalty. While in the case here at bar, the farmer is not permitted to use the wheat he produces by his own labor, on his own farm, for any purpose whatsoever, until he pays the penalty. He cannot sell it, he cannot give it away. He cannot feed it to his livestock, he cannot feed it to his poultry. He cannot grind it into flour and bake it into bread for himself and his family.

> "The statute does not purport to control production. It sets no limit upon the acreage which may be planted or produced, and imposes no penalty for the planting and producing of tobacco in excess of the marketing quota. It purports to be solely a regulation of interstate commerce, which it reaches and affects at the throat where tobacco enters the stream of commerce, the marketing warehouse. * * *
>
> The act did not prevent any producer from holding over the excess tobacco produced or processing or storing it for sale in a later year." Mulford v. Smith, 307 U. S. 38.

The Mulford case gives little comfort to those who would destroy constitutional government by invading the private

homes of farmers, under the guise of regulating interstate commerce. That case deals only with dealers in interstate commerce. May we also suggest to the court that they read the dissenting opinion by Justice Butler, in that case. This will throw additional light on the majority opinion.

In no case, decided by the Supreme Court to date, was there an attempt made to prohibit the farmer from producing an essential food product and penalizing him for doing so. In all of the cases decided by the Supreme Court, except one, the regulation was that of interstate dealers or buyers. In the case of United States v. Rock Royal Co-Operative, 307 U. S., the Court says:

> "Each defendant is a dealer handling milk moving in interstate commerce."

The only exception to the above cases is the case of United States v. Wrightwood Dairy Co., 86 Law. Ed. 431, but even in that case, however much we may question its soundness, the act dealt solely and exclusively with intrastate dealers in milk. In that case the court virtually holds that the tail wags the dog. That forty per cent of interstate commerce control sixty per cent of intrastate commerce. If that is correct, then one-half of one per cent interstate commerce, could control ninety-nine and one-half per cent of intrastate commerce.

While we cannot follow that logic, yet that case does not decide the issues here. There it was not attempted to penalize the producer for milking a cow and drinking the milk, or letting the calf suck the cow; or even of milking the cow and giving it to his children. It did not attempt to make that a crime. The aim was, to control the intrastate buyer, and the court concluded that he indirectly competed with interstate commerce.

"The extent of regulation depends on the nature and character of the subject and what is appropriate to its regulation. The powers possessed by government to deal with a subject are *neither inordinately enlarged or greatly dwarfed because the power to regulate interstate commerce applies.*" Wilson v. New, 243 U. S. 332 (p. 346.) Hammer v. Dagenhart, 247 U. S. 251.

Congress cannot legally annihilate the constitution—the fundamental law of the land—under the guise of proceeding under the interstate commerce clause. We submit that both Congress and the courts have gone to the extreme limit in that direction. The time has arrived for the pendulum to return.

Not even the mistaken notions of necessity—of surpluses—of the Department of Agriculture can annul the constitution. The people alone can alter that instrument. It is not for Congress or the courts to amend the constitution by reading something into the interstate commerce clause that is not there.

"Not even the changes of the remedy may be pressed so far as to cut down the security of a mortgage without *moderation or reason or in a spirit of oppression. Even when the public welfare is invoked as an excuse, these bounds must be respected.*" Worthen Co. v. Kavanaugh, 294 U. S.

The bounds of the whole constitution must be respected. *One part, or one clause, must not be used as an excuse to annihilate every other part of the instrument.* The constitution must be read, interpreted and upheld as a whole—the whole instrument is flexible to be sure, but it is not self destructive. *It does not contain the germ—a clause—for its own annihilation.*

II.

Violate Article 1, Secs. 7 and 9

If the penalty of 49c a bushel on so-called "excess wheat" is a tax, then, we submit, revenue bills must originate in the House of Representatives. Public Law No. 74, originated in the Senate. If it is a tax, then the money collected under it, should be paid into the general fund of the Treasury, and drawn out only by appropriations made by law.

If it is a penalty, as the act says it is, then it is an ex post facto law. In either case, it is unconstitutional. The constitution is our authority for that.

If Congress can punish a farmer for planting wheat eight months before the law is passed, by penalizing him, then it can also punish him by putting him in jail. The degree of punishment is in the discretion of Congress, but the Constitution says that these laws cannot be ex post facto. Neither can Congress make the planting of wheat, or farming operations, entirely within a state, an unlawful or criminal act. This is beyond its constitutional power.

Section 9, Article 1, of the Constitution further says:

> "No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another."

The purpose of this provision is clear. The framers of our Constitution prohibited Congress from giving one state preference over another. Each state is free to compete with every other state in industry, in agriculture, and in manufacture. As far as intrastate activities are concerned, no state can be limited, restrained, or discriminated against by the Federal Government.

Yet, the act here under consideration, would freeze production of wheat in each state. This, in accordance with its past production. It, in fact, says to the State of Vermont, and to other states: "You cannot, in the future, produce much wheat, because you have never produced much before. If Congress can do this, then it can do also the opposite, and say to the State of Kansas: "You have produced enough wheat in the past, you cannot produce it in the future."

If Congress can do this in the case of wheat, then it can do it with every other agricultural commodity, or manufactured article. Admit this doctrine, and constitutional government ceases to exist.

III.

Violate Article 4, Section 2.

The acts here in question, violate Article 4, Section 2, in that they deny the citizens of each state all the privileges and immunities of citizens of the several states. They attempt to freeze a certain class of citizens in a certain business, farming, into a status quo. The citizens of each state have a right to compete with the citizens of every other state in the production of agricultural products. That right cannot be taken away from them, constitutionally, by Congress. The citizens of each state have a right to change their vocation, or occupation, from one to another within the state, without asking the Secretary of Agriculture for his permission. To hold otherwise, is to be intellectually dishonest with ourselves and with our form of government.

IV.

Violate Article 1, Section 1.

These laws, violate Article 1, Section 1, in that they give to the Secretary of Agriculture, legislative power. They give

to him, power by rules and regulations, to make laws—to legislate. That power is vested in Congress alone.

Section 336 provides:

> "Between the date of issuance of any proclamation of any national marketing quota for wheat and June 10th, the Secretary shall conduct a referendum, by secret ballot, of farmers who will be subject to the quota specified therein, to determine whether such farmers favor or oppose such quota. * * *"

Congress fails to furnish the Secretary a yardstick as to what farmers are subject to the quota. The Secretary ruled that only farmers who planted more than fifteen acres of wheat, the previous year, had a right to vote. Yet, many of these farmers, who he denied the right to vote, he now attempts to penalize for planting excess acreage.

It undoubtedly was under similar rules and instructions, that the Secretary provided shoe boxes, rather than ballot boxes, and provided that the 136,000, that are on his payroll, should, in the majority of cases, be judges at the referendum election. There was little secrecy about the casting of the ballots, but plenty of secrecy in the counting.

It was, undoubtedly, under instructions and rules by the Secretary, that the franked envelopes, containing letters directing the farmer how to vote, were sent out by the county committees. Such a procedure is not only an unlawful delegation of legislative powers, but is a fraud on its face. It must not go unchallenged, or continue to grow. We have a right to demand a higher standard of public morals, and public honesty in the conduct of these elections.

> "Congress is not permitted by the Constitution to abdicate or transfer to others, the essential legislative functions with which it is vested." Panama Rfg. Co. vs. Ryan, 293 U. S. 388.
>
> "We pointed out, in the Panama Company case that the Constitution has never been regarded as denying to Con-

gress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained." Schechter Corp. v. United States, 295 U. S. 495.

Less than twenty per cent of the six million farm families plant wheat in a given year. It is not always the same farmer who plants wheat. Agriculture is in a constant flux. The kind of products grown by the individual farmer changes from year to year depending upon conditions far beyond the control of the Department of Agriculture.

The laws herein complained of attempt to give to a class, and to a small group of that class—less than one-tenth of all the farmers—the power to legislate, to put into operation a policy of restricting production of an essential food product—this by a referendum vote of that small group, and yet binding upon all of us. We submit that this is not a ministerial power, but a legislative power. A power that effects the entire nation.

If this can be done in the field of agriculture, it can be done in the field of manufacture—in all industry. Then Congress can delegate to any group the power to curtail production by a referendum vote. This in utter disregard of the welfare of the nation, or the want and suffering of the people. It can give to any group the power to penalize and imprison if its policy is not followed. Such a policy is a total stranger to our constitution. It is foreign to "our way of life." It cannot be sustained.

V.

Violate Article 5 of Amendments

These acts violate Article 5 of amendments to the Constitution, in that they attempt to confiscate and deprive the plaintiffs of property without due process of law—without just compensation. Plaintiff's wheat, here in question, was planted eight months before Public Law No. 74 was passed. That law is not only unconstitutional, because it attempts to control production, but unconstitutional because it is retroactive. It attempts to make that a wrong, which is not a wrong; and attempts to do so in a retroactive mannner.

It has been held unconstitutional, as far as the 1941 crop is concerned, in the recent decision of the District Court of Ohio. In the case of Roscoe C. Filburn v. Carl R. Helke, but we submit it is wholly unconstitutional, and not only as to the 1941 crop. We insist that it does not only violate practically every section of the constitution, but violates the spirit and the letter of the entire constitution, including the general welfare clause.

Certainly the production of wheat, on one's own farm, entirely within one state, cannot be prohibited or controlled by a penalty tax, under any act of Congress. That is the whole intent and purpose of the "penalty tax", in the acts here in question. It is true that an attempt is made to do this by subterfuge, by referring to interstate commerce. The farmer cannot be classified occupationally as a dealer in inter or intrastate commerce, or as a dealer in lottery tickets, or adulterated food, or white slave traffic, or stolen automobiles, or kidnapped persons. He is engaged in an honorable and lawful occupation—feeding the nation.

In the case of Louisville Bank v. Radford, 295 U. S. 555, Justice Brandeis said:

"The province of the Court is limited to deciding whether the Frazier-Lemke Act as applied has taken from the Bank without compensation, and given to Radford, rights in specific property which are of substantial value. * * * As we conclude that the Act as applied has done so, we must hold it void. *For the Fifth Amendment commands that however great the Nation's need, private property shall not be thus taken even for a wholly public use without just compensation.*"

VI.

Violate Articles 7 and 8 of Amendments

These acts violate Articles 7 and 8 of amendments of the Constitution, in that they attempt to deprive the plaintiffs of their property, *by placing a lien, not only upon the excess wheat, but upon all of the wheat produced during the crop year of 1941. This lien is not placed upon the crop after a trial by jury, but is placed thereon, in an arbitrary manner, by the statute, without trial and without an opporunity to be heard.*

The 49c penalty amounts to confiscation of the plaintiffs' wheat. At no time since 1930, have the farmers received cost of production for their wheat. From 1930 to 1940, they received from sixty-nine to seventy-five per cent parity prices. They fed the nation at a loss. They donated their services, and the services of their wives and children to the nation,—the honeyed words and the camouflage of the department notwithstanding. In place of giving them a one-hundred per cent parity, or cost of production, *Congress has been imposed upon, and gave them an unconstitutional penalty tax, and the one hundred thirty-six thousand Bellweathers on the payroll of the Department of Agriculture cannot continue to fool us.*

VII.

Violate Articles 9 and 10 of Amendments

The acts here under consideration, violate Articles 9 and 10 of the amendments of the constitution, *with a boldness not*

heretofore attempted in any act of Congress, the attempt to usurp the power and rights expressly and absolutely retained by the people, and reserved to the states. If, under the guise of interstate commerce, Congress can go into the states and fine farmers for raising wheat under a law, eight months after the wheat had been planted, then the end of our constitution has arrived. If Congress can do this, then it can tell the farmer how many babies he can raise, because ultimately they will grow up and cross the state boundary line. Such an absurd doctrine this court will not follow.

The reservation to the states respectively, only means the reservation of the rights of sovereignty, which they respectively possessed before the constitution of the United States, and which they had not parted from by that instrument. Any legislation by Congress, beyond the limits of the power delegated, would be trespassing upon the rights of the states or the people, and would not be the supreme law of the land, but null and void. Gordon v. United States, 117 U. S. 697. See also, United States v. Williams, 194 U. S. 295.

VIII.

Repugnant to Article 13, Section 1.

These laws are repugnant to Article 13, Section 1 of amendments to the Constitution, because they virtually make a slave out of the farmer. It is required, under the act, to pay the penalty, or give the so-called "excess wheat" to a Secretary of Agriculture for nothing. *It takes labor to produce wheat. If, after it is produced, somebody else can take it, or exact forty-nine cents a bushel from you for raising it, it seems to us that constitutes involuntary servitude.* There is no need in enlarging upon that subject.

LET US GET THE CORRECT FACTS.

Legislative Findings?

Let us keep the record straight; designating legislative findings does not make those findings true. Most of the facts stated as facts in Section 331 of the Agricultural Adjustment Act, are not facts, they are incorrect statements and erroneous conclusions. They were written by the attorneys of the Department of Agriculture, who prepared the bill, and Congress adopted them. *Congress had a right to rely upon them, but, unfortunately, they are not correct, but erroneous.*

It is not true that wheat or flour flows almost entirely through instrumentalities of interstate and foreign commerce, from producers to consumers. The reverse is the truth—the bulk of it remains in intrastate commerce. *Thirty-two states, and the District of Columbia consume more wheat and flour than they produce. Only sixteen states produce more than they consume, and of those sixteen, only ten in quantity. Thirty-one per cent of all the wheat raised never leaves the farms on which it is produced.* It is used for seed and feed for livestock. An amount equal to sixty-eight per cent is consumed by and within the states. See tables 1, 2 and 3, and explanation in appendix hereto.

The reports and records of the Department of Agriculture, the Bureau of Census, and the Department of Commerce show that we have not had an abnormal supply of wheat since 1930, and prior thereto. Therefore, it could not have been a burden upon interstate and foreign commerce. Again, common horse sense tells us, as well as the evidence, that an abundant crop stimulates interstate commerce. You cannot assist interstate commerce by curtailment of essential food products. Since there was no abnormal excess, the statements made in Section 331, that it overtaxed the facilities of

interstate commerce and foreign transportation, are incorrect. See tables 1, 2 and 3 and explanation in appendix hereto.

Again, prices are depressed by price manipulation, and not by interstate commerce. The wheat trade has been well organized, and, as far as being orderly, it has been quite orderly—in fact, it has been a little too orderly and submissive to price manipulation. If there have been any abnormally deficient supplies, that has been due to the distressed shortsightedness of the Department of Agriculture, and not due to the farmer producing the food of a nation. Two erroneous statements never make a correct one.

In paragraph 3 of Section 331, a lot of high sounding phrases are used which mean really nothing. They are intended to becloud and muddle. They are intended to make the unthinking believe that the millennium is about to come. They are self-serving declarations. The truth is, that this part of the Agricultural Adjustment Act has performed no miracles. Of course, there has been an increase of prices since 1930 and 1932, but take ten years before 1932, and then ten years from 1932, and you will find that the income from agriculture was some ten billion dollars greater during ten years back from 1932, than it was from the ten years forward from 1932, in spite of all the camouflage and misrepresentation.

The last two paragraphs of section 331 remind us of boyhood orations in high school. They are just a jumble of words and erroneous conclusions, born of desire, rather than backed up with facts. *We submit it is not necessary to violate the Constitution in order to give agriculture its just dues. Legislative findings, when proven to be untrue by facts, cannot be made the basis of sustaining unconstitutional acts.*

CONCLUSION.

We submit there has been a growing tendency to disregard the rights of states, and to centralize power in Washington.

We deny, most emphatically, that this has been for the good of the nation. We submit that the struggle in the future will be to recover some of those rights, so readily surrended by the people to the federal government. Power always wants more power, and we are no exception to the rule, but let us come back to the Constitution.

> "The powers the people have given to the general government are named in the Constitution, and all not there named, either expressly or impliedly, are reserved to the people and can be exercised only by them or upon further grant from them." United States v. Williams, 194 U. S. 295.

We challenge the Department of Agriculture to point out to us under what provisions of the Constitution Congress has the right to give to him the power to control and regulate the production of wheat. *No such power exists, therefore Congress cannot give it to him, or even delegate it to him.*

The states within their spheres are as independent of the general government, as the general government within its sphere is independent of the states. *Both must respect the federal constitution.* Buffington v. Day, 11 Wall. 124.

Respectfully submitted,

ATTORNEYS AMICUS CURIAE

WILLIAM LEMKE, Fargo, N. D.
LOUIS M. DAY, Chillicothe, O.
HENRY PETZINGER, Canton, O.
EVA L. MINOR, Kankakee, Ill.
S. L. LAUCKS, York, Pa.
LEE R. DABBELT, Celina, O.
RICHARD R. KRUSE, Sandusky, O.
FRANK A. MEEK, Clay Center, Kans.
T. A. BILLINGSLY, Greenville, O.
CARL E. MOLLENBERG, Bowling Green, O.
NOBEL Y. DOWELL, East Peoria, Ill.
SAM HETZLER, Sidney, O.
RALPH HOFFMAN, Westminster, Md.
ROBERT ROULE, LaPorte, Ind.
MARSH & MARSH, Indianapolis, Ind.
ADDINGTON & JONES, Topeka, Kans.
GILBERT MARTIN, Norwalk, O.

APPENDIX.

TABLE 1 - WHEAT

Official Returns of May 31, 1941, Wheat Referendum; Number of Wheat Farms; Number of Wheat Allotments; Number of Wheat Payees and Percentages, By States.

ANALYSIS

1—This table groups the 33 "deficit" states, including the District of Columbia, in one category and the 16 "surplus" states in the other.

2—The states are arranged in descending order as total consumption of wheat, by percentage, exceeds production.

3—The number of votes cast, wheat allotments and wheat payees are compared with and keyed to column 4 - the number of wheat farms (on which any wheat was threshed) according to the United States Census 1940.

4—It is to be noted that there are 1,386,300 wheat farms - a total of 1,747,000 wheat allotments and 1,523,383 wheat payees in the United States and a total of 559,630 votes cast in the May 31, 1941 wheat referendum.

5—Therefore for each 100 wheat farms only 40.4 farmers voted in the May 31st Referendum while 56.3 farmers were disfranchised by Public Law 74 - 77th Congress and only 3.3 farmers who had a right to vote, did not vote.

6—On the other hand 47.4 per cent of all wheat farms are in the 33 "deficit" states and for each 100 wheat farms only 17.5 farmers voted in the May 31st Referendum - 55.2 farmers were disfranchised and 27.3 farmers who had a right to vote, did not vote.

7—In the "surplus" states, 52.6 per cent of all wheat farms are located and for each 100 farms, 61 farmers voted in the May 31st Referendum and 57.3 farmers were disfranchised. This accounts for 118.3 farmers for each 100 wheat farms.

8—In the 33 "deficit" states there were 89.5 wheat allotments for each 100 wheat farms while in the 16 "surplus" states there were 159.1 wheat allotments for each 100 wheat farms - and for the United States 126.1.

9—The number of wheat payees in the "deficit" states equal 72.8 payees for each 100 wheat farms - 143.5 in the "surplus" states and only 109.9 for the United States.

TABLE I—WHEAT: OFFICIAL RETURNS OF MAY 31, 1941 WHEAT REFERENDUM

Number of Farms Threshing Wheat; Number of Wheat Allotments; Number of Wheat Payees and Percentages, by States

STATES	(1) NUMBER OF VOTES CAST May 31st, 1941. Yes	(2) No	(3) Total	(4) Number Wheat Farms 1940 Census	(5) NUMBER WHEAT ALLOTMENTS Total	(6) Under 15 Acres	(7) Number of Payees "WHEAT"	(8) Votes cast as percentage of Wheat Farms	(9) Payees as percentage of Wheat Farms	(10) Total Wheat Allotments as percentage of Wheat Farms	(11) Wheat Allotments under 15 acres as percentage of Wheat Farms
1 Vermont	0	0	0	57	0	0	0	0.	0.	0	
2 Alabama	9	1	10	967	0	0	48	0.1	4.9	0	
3 Maine	0	0	0	509	0	0	0	0.	0.	0	
4 Arkansas	119	11	130	3,204	9,000	9,000	6,351	0.4	198.2	280.8	280.2
5 New Jersey	107	211	318	4,141	1,000	1,000	881	7.6	21.2	24.1	24.1
6 Georgia	163	89	252	29,911	3,000	3,000	551	0.8	1.8	10.0	10.0
7 New York	1,087	909	1,996	26,825	19,000	14,000	6,901	7.4	25.7	70.8	52.1
8 Wisconsin	167	6	173	18,856	21,000	21,000	16,865	0.9	89.4	111.3	111.3
9 South Carolina	273	44	317	41,111	3,000	3,000	235	0.7	0.5	72.9	72.9
10 West Virginia	289	161	450	16,223	1,000	1,000	1,430	2.7	8.8	6.1	6.1
11 North Carolina	1,919	371	2,290	57,695	4,000	3,000	5,370	3.9	9.3	6.9	5.1
12 Tennessee	934	463	1,397	35,305	11,000	3,000	10,840	3.9	29.6	31.1	8.4
13 Kentucky	4,061	692	4,773	30,197	14,000	5,000	12,980	15.8	42.9	46.3	16.5
14 Pennsylvania	2,648	3,703	6,351	81,325	55,000	37,000	33,261	7.8	40.8	67.6	45.4
15 Iowa	3,783	636	4,419	21,601	31,000	23,000	33,935	20.4	157.0	143.5	106.4
16 California	1,986	1,020	3,006	5,011	9,000	1,000	6,286	59.9	125.4	179.6	19.9
17 Arizona	111	3	114	1,380	1,000	0	814	0.8	58.9	72.4	0.
18 Nevada	94	61	155	831	1,000	1,000	912	18.6	109.7	120.3	120.3
19 Virginia	2,218	976	3,194	52,640	12,000	12,000	11,280	9.7	21.4	22.7	22.7
20 Michigan	5,270	1,643	6,913	69,197	95,000	84,000	59,483	9.9	85.9	145.7	121.3
21 Maryland	2,992	886	3,878	17,140	16,000	7,000	14,150	22.6	82.5	93.3	40.0
22 Missouri	18,472	4,698	23,170	70,958	116,000	73,000	96,011	32.5	135.3	163.4	102.8
23 Texas	15,069	1,001	16,070	26,387	59,000	3,000	70,272	60.9	266.3	223.5	11.3
24 Illinois	25,502	9,720	35,222	63,363	105,000	58,000	86,601	55.5	136.6	165.7	91.5
25 Delaware	805	76	881	2,829	3,000	1,000	3,740	31.1	132.2	106.0	35.3
26 Massachusetts	0	0	0	38	0	0	0	0.	0.	0.	0.
27 Connecticut	0	0	0	43	0	0	0	0.	0.	0.	0.
28 Rhode Island	0	0	0	7	0	0	0	0.	0.	0.	0.
29 New Hampshire	0	0	0	11	0	0	0	0.	0.	0.	0.
30 District of Columbia	0	0	0	0	0	0	0	0.	0.	0.	0.
31 Mississippi	0	0	0	79	0	0	0	0.	0.	0.	0.
32 Louisiana	1	12	13	8	0	0	0	162.5	0.	0.	0.
33 Florida	0	0	0	0	0	0	0	0.	0.	0.	0.
TOTALS DEFICIT STATES	88,099	27,393	115,492	657,876	589,000	363,000	479,197	17.5	72.8	89.5	55.1
1 Ohio	16,940	17,896	33,836	120,882	168,000	129,000	97,285	28.0	80.4	138.9	106.7
2 Colorado	7,866	1,144	9,010	15,906	26,000	3,000	29,441	56.6	185.0	163.4	18.8
3 Minnesota	20,614	3,282	23,896	81,167	111,000	76,000	96,092	29.4	118.3	136.7	93.6
4 Wyoming	1,731	136	1,867	4,369	7,000	1,000	6,076	42.7	139.0	160.2	22.8
5 Utah	6,560	368	6,928	12,310	17,000	12,000	12,247	56.3	99.5	138.2	97.5
6 Indiana	20,340	10,839	31,179	75,411	122,000	89,000	87,866	41.3	116.5	161.7	118.0
7 New Mexico	1,434	81	1,515	6,211	4,000	0	4,158	24.3	66.9	64.4	0.
8 South Dakota	28,424	2,056	30,480	40,337	85,000	23,000	115,577	75.5	286.5	210.7	57.0
9 Oklahoma	31,562	7,712	39,274	51,250	97,000	18,000	88,246	76.6	172.1	189.2	35.1
10 Oregon	5,555	260	5,815	14,734	16,000	2,000	15,996	39.4	108.5	108.5	13.5
11 Nebraska	33,206	7,224	40,430	58,212	94,000	23,000	115,815	69.4	198.9	161.4	39.5
12 Idaho	12,081	764	12,845	22,795	31,000	10,000	25,672	56.3	112.6	135.9	43.8
13 North Dakota	66,253	3,708	69,961	65,815	129,000	7,000	138,783	106.2	210.8	196.0	10.6
14 Washington	14,394	990	15,384	12,968	16,000	12,000	11,369	121.4	89.7	126.3	94.7
15 Kansas	81,398	20,568	101,966	100,240	186,000	9,000	157,831	101.7	157.4	185.5	8.9
16 Montana	18,112	1,640	19,752	25,192	49,000	3,000	41,742	78.4	165.6	194.5	11.9
TOTALS, SURPLUS STATES	365,470	78,668	444,138	727,463	1,158,000	417,000	1,044,196	61.0	143.5	159.1	57.3
TOTALS, UNITED STATES	453,569	106,061	559,630	1,385,300	1,747,000	780,000	1,523,393	40.4	109.9	126.1	56.3

TABLE II - WHEAT

Production and Disappearance by Uses, by States—
Five year average for Period 1931-'32 to 1935-'36; Mill grindings by States and uses as Percentage of Production.

ANALYSIS

1—This Table groups the 33 "deficit" states, including the District of Columbia, in one category and the 16 "surplus" states in the other.

2—The states are arranged in descending order as total consumption of wheat, by percentage, exceeds production.

3—In this 5 year period, domestic consumption of wheat exceeded production by 1,397,000 bushels a year.

4—In the 33 "deficit" states total consumption of wheat exceeded production by 261,957,000 bushels a year.

5—In the 16 "surplus" states, production of wheat exceeded consumption by 260,560,000 bushels a year.

6—The 260,560,000 bushels of surplus from the 16 "surplus" states is shipped into the 33 "deficit" states, therefore about 260,560,000 bushels out of a total of 680,603,000 bushels or only about 38.2 per cent of our total production of wheat flows in the channels of Interstate Commerce.

7—This would indicate that about 61.8 per cent of our wheat production is consumed in the states where produced, or Intrastate Commerce.

8—We know that 37.3 per cent of all wheat produced in the 33 "deficit" states is used for feed and seed and therefore for all practical purposes, does not leave the farm on which it is produced.

9—In the 16 "surplus" states, 28.5 per cent of the wheat produced is used for feed and seed and for the United States 30.8 per cent.

10—Mill grindings in the 16 "surplus" states exceeds consumption, as food, by about 150,925,000 bushels of wheat.

11—Mill grindings in the 33 "deficit" states is about 164,719,000 bushels of wheat less than consumption as food.

12—This would indicate that about 109,635,000 bushels of wheat - as wheat - and about 150,925,000 bushels of wheat - as flour - is shipped annually from the "surplus" states to the "deficit" states, totalling 260,560,000 bushels or 38.2 per cent of our total production.

13—Consumption as food about equals the difference between total consumption and feed and seed used on the farm.

TABLE II—WHEAT: Production and Disappearance, by uses, by States: Five Year average for Period 1931-'32 to 1935-'36; Mill Grindings, by States and Uses as Percentage of Production.

STATES	(1) Total Production	(2) Total Consumption	(3) Consumption as Percentage of Production	(4) Consumption in excess of Production	(5) Mill Grindings	(6) Number of Mills 1940	(7) Seed	(8) Feed	(9) Feed and Seed	(10) Feed and Seed as Percentage of Production	(11) Consumption as Food	(12) Food Consumption as % of Production
	1,000 Bushels	1,000 Bushels		1,000 Bushels	1,000 Bushels		1,000 Bushels	1,000 Bushels	1,000 Bushels		1,000 Bushels	
1 Vermont	4	1,435	35,875.0	1,431		0	0	69	69	1,725.0	1,366	34,150.0
2 Alabama	60	11,632	19,386.7	11,572	401	0	8	91	99	165.0	11,533	19,221.6
3 Maine	124	3,113	2,510.5	2,989	47	0	14	104	118	95.1	2,995	2,415.3
4 Arkansas	552	9,144	1,656.7	8,592	762	1	103	751	854	154.7	8,290	1,501.8
5 New Jersey	1,176	15,851	1,347.9	14,675	334	3	113	780	893	75.9	14,958	1,271.9
6 Georgia	1,188	12,776	1,075.4	11,588	760	6	226	201	427	35.9	12,349	1,039.4
7 New York	5,020	48,362	963.4	43,342	57,350	33	527	2,238	2,765	55.0	45,597	908.3
8 Wisconsin	1,797	12,394	689.7	10,597	3,076	8	213	1,451	1,664	92.5	10,730	597.1
9 South Carolina	1,238	8,066	651.5	6,828	309	6	205	283	488	39.4	7,578	612.1
10 West Virginia	2,006	8,276	412.7	6,270	1,515	9	248	804	1,052	52.4	7,244	361.1
11 North Carolina	4,731	15,445	326.5	10,714	4,462	36	593	946	1,539	32.5	13,906	293.9
12 Tennessee	4,113	12,932	314.4	8,819	7,334	49	510	1,111	1,621	39.4	11,311	275.0
13 Kentucky	4,671	13,052	279.4	8,381	6,203	56	589	1,044	1,633	34.9	11,419	244.4
14 Pennsylvania	17,551	43,738	249.2	26,187	6,309	90	1,987	6,310	8,297	47.2	35,441	201.9
15 Iowa	5,185	12,276	236.8	7,091	8,842	14	600	2,267	2,867	55.2	9,409	181.4
16 California	11,192	22,930	204.9	11,738	8,702	12	1,303	1,079	2,382	21.2	20,548	183.5
17 Arizona	877	1,762	200.9	885	250	4	62	216	278	31.6	1,484	169.2
18 Nevada	352	596	169.3	244	103	0	22	226	248	70.4	348	98.8
19 Virginia	8,695	13,343	153.5	4,648	4,738	68	864	1,987	2,851	32.7	10,492	120.6
20 Michigan	16,442	24,995	152.0	8,553	7,765	38	1,627	6,315	7,942	48.3	17,053	103.7
21 Maryland	7,586	8,412	110.9	826	2,339	22	774	1,308	2,082	27.4	6,330	83.4
22 Missouri	23,100	25,038	108.4	1,938	37,839	61	2,449	8,436	10,885	47.1	14,153	61.2
23 Texas	30,105	32,480	107.9	2,375	27,906	42	3,556	4,916	8,472	28.1	24,208	80.4
24 Illinois	34,451	35,900	104.2	1,449	23,689	42	2,985	4,971	7,956	23.0	27,944	81.1
25 Delaware	1,432	1,487	103.8	55	315	7	146	363	509	35.5	978	68.2
26 Massachusetts	0	14,452	0	14,452	25	0	0	109	109	0	15,343	0
27 Connecticut	0	6,075	0	6,075	10	0	0	100	100	0	5,975	0
28 Rhode Island	0	2,501	0	2,501	0	0	0	81	81	0	2,420	0
29 New Hampshire	0	1,796	0	1,796	124	0	0	44	44	0	1,752	0
30 District of Columbia	0	1,974	0	1,974	99	1	0	0	0	0	1,974	0
31 Mississippi	0	8,694	0	8,694	0	0	0	97	97	0	8,597	0
32 Louisiana	0	8,605	0	8,605	0	0	0	53	53	0	8,552	0
33 Florida	0	6,073	0	6,073	0	0	0	23	23	0	6,050	0
TOTAL DEFICIT STATES	183,648	445,605	242.6	261,957	213,608	608	19,724	48,774	68,498	37.3	378,327	206.0
1 Ohio	41,936	39,372	93.9	(a) 2,564	16,122	80	3,951	11,323	15,274	36.4	24,098	57.4
2 Colorado	8,712	8,147	93.8	(a) 565	4,823	21	1,809	2,465	4,274	49.0	3,873	44.4
3 Minnesota	17,871	16,629	93.1	(a) 1,242	62,217	51	2,827	4,101	6,928	38.7	9,701	54.2
4 Wyoming	2,127	1,918	90.2	(a) 209	418	4	335	736	1,071	50.3	847	39.8
5 Utah	4,556	3,845	84.4	(a) 711	5,240	21	384	1,595	1,979	43.4	1,866	40.9
6 Indiana	30,820	21,830	70.8	(a) 8,990	12,646	51	3,023	6,470	9,493	30.8	12,337	40.0
7 New Mexico	3,025	2,143	70.8	(a) 882	278	2	280	299	579	19.1	1,564	51.7
8 South Dakota	20,113	11,326	56.3	(a) 8,787	719	6	4,598	4,085	8,683	43.1	2,643	13.1
9 Oklahoma	44,868	21,782	48.5	(a) 23,086	18,744	30	4,088	7,673	11,761	26.2	10,021	22.3
10 Oregon	16,689	7,924	47.5	(a) 8,765	12,847	19	1,763	2,621	4,384	26.2	3,540	21.2
11 Nebraska	34,065	14,165	41.6	(a) 19,900	12,899	39	3,893	5,146	9,039	26.5	5,126	15.0
12 Idaho	20,771	8,505	40.9	(a) 12,266	2,243	17	1,631	5,113	6,744	32.4	1,761	8.4
13 North Dakota	59,675	21,665	36.3	(a) 38,010	4,951	12	13,374	5,636	19,010	31.8	2,655	4.4
14 Washington	42,083	13,105	31.1	(a) 28,978	19,607	23	3,169	4,218	7,387	17.5	5,718	13.5
15 Kansas	117,474	34,667	29.5	(a) 82,807	35,422	80	13,323	14,375	27,698	23.5	6,969	5.9
16 Montana	32,170	9,372	29.1	(a) 22,798	6,442	17	4,335	3,063	7,598	23.0	1,974	6.1
TOTALS SURPLUS STATES	496,955	236,395	47.5	(a)260,560	245,618	473	62,783	78,919	141,702	28.5	94,693	19.0
TOTALS U.S.A.	680,603	682,000	100.2	1,397	459,226	1,081	82,448	127,693	210,141	30.8	473,020	69.5

TABLE III - WHEAT

Supply and Distribution in Continental United States: Crop Years 1933 to 1940 inclusive, showing cumulative Consumption and Exports; New crop; Deficit; Supply and Net Reserves, including Imports.

ANALYSIS

1—This Table presents the combined totals of supply and distribution of wheat for the crop year, beginning July 1, 1933 and ending June 30, 1941.

2—11.6 per cent of wheat produced was used for seed for new crop.

3—13.3 per cent of wheat produced was fed on the farms of growers. 24.9 per cent of production does not leave the farm.

4—69.8 per cent of wheat produced was used for commercial foods and feeds. All domestic disappearance 94.7 per cent of production.

5—6.3 per cent of wheat production was exported and shipped.

6—Therefore 101.0 per cent of our wheat production was consumed, exported and shipped.

7—This proves that at the end of the 8th crop year we are in a deficit position from new crop production by 56,400,000 bushels.

8—Column 9 shows the cumulative deficit of production thru the years July 1, 1933 to June 30, 1941.

9—Taking into account all known sources of wheat supply, carry-over, production and imports of wheat - feed wheat and flour, during the first seven of the eight years, our net reserve was less than the 377,900,000 bushel carry-over at the beginning of the period, July 1, 1933.

10—It has taken eight years of production and imports to replace our reserve carry-over of 377,900,000 bushel which we had on July 1, 1933 and "up" it by 33,200,000 bushels.

NOTE.

The increase in production of wheat from the 1900-'4 period to 1935-'39 period is 16.6% while the increase in population for the same period is 62.9%. On the basis of an average per capita consumption rate or food of 3.7 bushels it requires 208,100,000 bushels more wheat to feed our nation in 1940 than it required in 1900.

TABLE III—WHEAT: Supply and Distribution in Continental United States; Crop Years, 1933 to 1940 inclusive, showing Cumulative Consumption and Exports; New Crop; Deficit; Supply and Net Reserves, including Imports.

Crop Year beginning July 1	(1) Seed, New Crop	(2) Feed (on Farms of Growers)	(3) Foods and Commercial Feeds	(4) Exports and Shipments	(5) Total Consumption and Exports	(6) New Crop	(7) Cumulative Consumption and Exports	(8) Cumulative New Crop	(9) Cumulative Deficit of Production	(10) Imports Milling, Feed-Wheat	(11) Cumulative Supply Production Imports & Carry-Over	(12) Cumulative Consumption and Exports	(13) Cumulative net Reserve, All Sources
	Million Bu.	Million Bu.	Million Bu.	Million Bu.	Million Bu.	Million Bu.	Million Bu.	Million Bu.	Million Bu.	Thousand Bu.	Million Bu.	Million Bu.	Million Bu.
1933	77.8	72.9	476.9	28.3	655.2	551.6	655.2	551.6	- 103.6	153.0	(14) 929.7	655.2	274.5
1934	82.5	83.7	489.1	13.3	668.6	526.3	1,323.8	1,077.9	- 245.9	15,569.00	1,471.6	1,323.8	147.8
1935	87.5	83.1	488.6	7.1	666.3	626.3	1,990.1	1,704.2	- 285.9	34,617.0	2,132.5	1,990.1	142.4
1936	96.5	88.2	503.2	12.2	700.1	626.7	2,690.2	2,330.9	- 359.3	34,455.0	2,793.7	2,690.2	103.5
1937	94.1	112.8	495.8	103.3	806.0	876.6	3,496.2	3,206.5	- 289.7	634.0	3,669.9	3,496.2	173.7
1938	75.8	125.5	498.8	109.5	809.6	931.7	4,305.8	4,138.2	- 167.6	271.0	4,601.9	4,305.8	296.1
1939	72.8	91.4	537.3	48.3	749.8	751.4	5,056.6	4,889.6	- 167.0	(15) 263.0	5,353.6	5,055.6	298.0
1940	74.7	100.4	494.7	37.2	707.0	816.6	5,762.6	5,706.2	- 56.4	3,523.0	6,173.7	5,762.6	411.1
TOTALS (as of June 30th 1941)	661.7	757.3	3,984.4	359.2	5,762.6	5,706.2	5,762.6	5,706.2	- 56.4	89,485.0	6,173.7	5,762.6	411.1

References:
(1) Seed for New Crop—The Wheat Situation, No. W8-58, issued August 1941, P.2.
(2) Fed on farms of wheat growers—The Wheat Situation (SUPRA).
(3) Foods and Commercial feeds—The Wheat Situation (SUPRA).
(4) Exports include only flour made of domestic wheat and wheat. Imports for milling in bond excluded. The Wheat Situation (SUPRA).
(5) Total of columns 1-2-3-4.
(6) New crop—The Wheat Situation (SUPRA).
(7) Cumulative total domestic disappearance and exports 8 years.
(8) Cumulative total new crop—8 years, excluding carry-over as of July 1, 1933.
(9) Cumulative excess of domestic disappearance and exports over domestic production—excluding carry-over July 1, 1933.
(10) Imports, also "full duty" (42c) and 10 and 5 per cent ad valorem duty.—The Wheat Situation (SUPRA).
(11) Cumulative total new crop including carry-over of 377.9 million bushels as of July 1, 1933, plus imports (See Column 10).
(12) Cumulative total domestic disappearance and export.
(13) Cumulative supply of wheat including carry-over of 377.9 million bushels on July 1, 1933.
(14) Carry-over of 377.9 million bushels added to new crop of 1933.
(15) Effective Jan. 1, 1939, new trade agreement with Canada reduced ad valorem duty on "feed wheat" from 10% to 5%—The Wheat Situation p.23, (SUPRA).

Compiled by: EDWARD E. KENNEDY,
Kankakee, Illinois

pp. 9, 12, 13, 15; 10 + 14 - 1 - 2

SUPREME COURT OF THE UNITED STATES.

No. 59.—October Term, 1942.

Claude R. Wickard, Secretary of Agriculture of the United States, et al., Appellants,
vs.
Roscoe C. Filburn.

On Appeal from the District Court of the United States for the Southern District of Ohio.

[November 9, 1942]

Mr. Justice Jackson delivered the opinion of the Court.

The appellee filed his complaint against the Secretary of Agriculture of the United States, three members of the County Agricultural Conservation Committee for Montgomery County, Ohio, and a member of the State Agricultural Conservation Committee for Ohio. He sought to enjoin enforcement against himself of the marketing penalty imposed by the amendment of May 26, 1941,[1] to the Agricultural Adjustment Act of 1938,[2] upon that part of his 1941 wheat crop which was available for marketing in excess of the marketing quota established for his farm. He also sought a declaratory judgment that the wheat marketing quota provisions of the Act as amended and applicable to him were unconstitutional because not sustainable under the Commerce Clause or consistent with the Due Process Clause of the Fifth Amendment.

The Secretary moved to dismiss the action against him for improper venue but later waived his objection and filed an answer. The other appellants moved to dismiss on the ground that they had no power or authority to enforce the wheat marketing quota provisions of the Act, and after their motion was denied they answered it, reserving exceptions to the ruling on their motion to dismiss.[3] The case was submitted for decision on the pleadings and upon a stipulation of facts.

The appellee for many years past has owned and operated a small farm in Montgomery County, Ohio, maintaining a herd of

[1] 55 Stat. 203, 7 U. S. C. (Supp. No. I) § 1340.

[2] 52 Stat. 31, as amended, 7 U. S. C. § 1281 *et seq.*

[3] Because of the conclusion reached as to the merits we need not consider the question whether these appellants would be proper parties if our decision were otherwise.

dairy cattle, selling milk, raising poultry, and selling poultry and eggs. It has been his practice to raise a small acreage of winter wheat, sown in the Fall and harvested in the following July; to sell a portion of the crop; to feed part to poultry and livestock on the farm, some of which is sold; to use some in making flour for home consumption; and to keep the rest for the following seeding. The intended disposition of the crop here involved has not been expressly stated.

In July of 1940, pursuant to the Agricultural Adjustment Act of 1938, as then amended, there was established for the appellee's 1941 crop a wheat acreage allotment of 11.1 acres and a normal yield of 20.1 bushels of wheat an acre. He was given notice of such allotment in July of 1940 before the Fall planting of his 1941 crop of wheat, and again in July of 1941, before it was harvested. He sowed, however, 23 acres, and harvested from his 11.9 acres of excess acreage 239 bushels, which under the terms of the Act as amended on May 26, 1941, constituted farm marketing excess, subject to a penalty of 49 cents a bushel, or $117.11 in all. The appellee has not paid the penalty and he has not postponed or avoided it by storing the excess under regulations of the Secretary of Agriculture, or by delivering it up to the Secretary. The Committee, therefore, refused him a marketing card, which was, under the terms of Regulations promulgated by the Secretary, necessary to protect a buyer from liability to the penalty and upon its protecting lien.[4]

The general scheme of the Agricultural Adjustment Act of 1938 as related to wheat is to control the volume moving in interstate and foreign commerce in order to avoid surpluses and shortages and the consequent abnormally low or high wheat prices and obstructions to commerce.[5] Within prescribed limits and by prescribed standards the Secretary of Agriculture is directed to ascertain and proclaim each year a national acreage allotment for the next crop of wheat, which is then apportioned to the states and their counties, and is eventually broken up into allotments for individual farms.[6] Loans and payments to wheat farmers are authorized in stated circumstances.[7]

---

[4] Wheat—507, §§ 728.240, 728.248, 6 Federal Register 2695, 2699-2701.

[5] § 331, 7 U. S. C. § 1331.

[6] § 335, 7 U. S. C. § 1335.

[7] §§ 302(b)(h), 303, 7 U. S. C. §§ 1302(b)(h), 1303; § 10 of the amendment of May 26, 1941, 7 U. S. C. (Supp. I) §§ 1340(10).

The Act provides further that whenever it appears that the total supply of wheat as of the beginning of any marketing year, beginning July 1, will exceed a normal year's domestic consumption and export by more than 35 per cent, the Secretary shall so proclaim not later than May 15 prior to the beginning of such marketing year; and that during the marketing year a compulsory national marketing quota shall be in effect with respect to the marketing of wheat.[8] Between the issuance of the proclamation and June 10, the Secretary must, however, conduct a referendum of farmers who will be subject to the quota to determine whether they favor or oppose it; and if more than one-third of the farmers voting in the referendum do oppose, the Secretary must prior to the effective date of the quota by proclamation suspend its operation.[9]

On May 19, 1941 the Secretary of Agriculture made a radio address to the wheat farmers of the United States in which he advocated approval of the quotas and called attention to the pendency of the amendment of May 26, 1941, which had at the time been sent by Congress to the White House, and pointed out its provision for an increase in the loans on wheat to 85 per cent of parity. He made no mention of the fact that it also increased the penalty from 15 cents a bushel to one-half of the parity loan rate of about 98 cents, but stated that "Because of the uncertain world situation, we deliberately planted several million extra acres of wheat. . . . Farmers should not be penalized because they have provided insurance against shortages of food."

Pursuant to the Act, the referendum of wheat growers was held on May 31, 1941. According to the required published statement of the Secretary of Agriculture, 81 per cent of those voting favored the marketing quota, with 19 per cent opposed.

The court below held, with one judge dissenting, that the speech of the Secretary invalidated the referendum; and that the amendment of May 26, 1941, "in so far as it increased the penalty for the farm marketing excess over the fifteen cents per bushel prevailing at the time of planting and subjected the entire crop to a lien for the payment thereof," should not be applied to the appellee because as so applied it was retroactive and in violation of the Fifth Amendment; and, alternatively, because the equities of the case so required.

[8] § 335(a), 7 U. S. C. § 1335(a).

[9] § 336, 7 U. S. C. § 1336.

43 F. Supp. 1017. Its judgment permanently enjoined appellants from collecting a marketing penalty of more than 15 cents a bushel on the farm marketing excess of appellee's 1941 wheat crop, from subjecting appellee's entire 1941 crop to a lien for the payment of the penalty, and from collecting a 15-cent penalty except in accordance with the provisions of § 339 of the Act as that section stood prior to the amendment of May 26, 1941.[10] The Secretary and his co-defendants have appealed.[11]

I.

The holding of the court below that the Secretary's speech invalidated the referendum is manifest error. Read as a whole and in the context of world events that constituted his principal theme, the penalties of which he spoke were more likely those in the form of ruinously low prices resulting from the excess supply rather than the penalties prescribed in the Act. But under any interpretation the speech cannot be given the effect of invalidating the referendum. There is no evidence that any voter put upon the Secretary's words the interpretation that impressed the court below or was in any way misled. There is no showing that the speech influenced the outcome of the referendum. The record in fact does not show that any, and does not suggest a basis for even a guess as to how many, of the voting farmers dropped work to listen to "Wheat Farmers and the Battle for Democracy" at 11:30 in the morning of May 19th, which was a busy hour in one of the busiest of seasons. If this discourse intended reference to this legislation at all, it was of course a public Act, whose terms were readily available, and the speech did not purport to be an exposition of its provisions.

To hold that a speech by a Cabinet officer, which failed to meet judicial ideals of clarity, precision, and exhaustiveness, may defeat a policy embodied in an Act of Congress, would invest communication between administrators and the people with perils heretofore unsuspected. Moreover, we should have to conclude that such an officer is able to do by accident what he has no power to do by design. Appellee's complaint, in so far as it is based on

---

[10] 7 U. S. C. § 1339. This imposed a penalty of 15¢ per bushel upon wheat marketed in excess of the farm marketing quota while such quota was in effect. See also, amendments of July 26, 1939, 53 Stat. 1126, 7 U. S. C. § 1335(c), and of July 2, 1940, 54 Stat. 727, 7 U. S. C. § 1301(b)(6)(A), (B).

[11] 50 Stat. 752-753, § 3, 28 U. S. C. § 380a.

this speech, is frivolous, and the injunction, in so far as it rests on this ground, is unwarranted. *United States* v. *Rock Royal Co-operative*, 307 U. S. 533.

II.

It is urged that under the Commerce Clause of the Constitution, Article I, § 8, clause 3, Congress does not possess the power it has in this instance sought to exercise. The question would merit little consideration since our decision in *United States* v. *Darby*, 312 U. S. 100,[12] sustaining the federal power to regulate production of goods for commerce except for the fact that this Act extends federal regulation to production not intended in any part for commerce but wholly for consumption on the farm. The Act includes a definition of "market" and its derivatives so that as related to wheat in addition to its conventional meaning it also means to dispose of "by feeding (in any form) to poultry or livestock which, or the products of which, are sold, bartered, or exchanged, or to be so disposed of."[13] Hence, marketing quotas not only embrace all that may be sold without penalty but also what may be consumed on the premises. Wheat produced on excess acreage is designated as "available for marketing" as so defined and the penalty is imposed thereon.[14] Penalties do not depend upon whether any part of the wheat either within or without the quota is sold or intended to be sold. The sum of this is that the Federal Government fixes a quota including all that the farmer may harvest for sale or for his own farm needs, and declares that wheat produced on excess acreage may neither be disposed of nor used except upon payment of the penalty or except it is stored as required by the Act or delivered to the Secretary of Agriculture.

Appellee says that this is a regulation of production and consumption of wheat. Such activities are, he urges, beyond the reach of Congressional power under the Commerce Clause, since they are local in character, and their effects upon interstate commerce are at most "indirect." In answer the Government argues that the

[12] See also, Gray v. Powell, 314 U. S. 402; Wrightwood Dairy Co. v. United States, 315 U. S. 110; Cloverleaf Co. v. Patterson, 315 U. S. 148; Kirschbaum v. Walling, 316 U. S. 517; Overnight Transportation Co. v. Missel, 316 U. S. 572.

[13] 54 Stat. 727, 7 U. S. C. § 1301(b)(6)(A), (B).

[14] §§ 1, 2, of the amendment of May 26, 1941; Wheat—507, § 728.251, 6 Federal Register 2695, 2701.

statute regulates neither production nor consumption, but only marketing; and, in the alternative, that if the Act does go beyond the regulation of marketing it is sustainable as a "necessary and proper"[15] implementation of the power of Congress over interstate commerce.

The Government's concern lest the Act be held to be a regulation of production or consumption rather than of marketing is attributable to a few dicta and decisions of this Court which might be understood to lay it down that activities such as "production," "manufacturing," and "mining" are strictly "local" and, except in special circumstances which are not present here, cannot be regulated under the commerce power because their effects upon interstate commerce are, as matter of law, only "indirect."[16] Even today, when this power has been held to have great latitude, there is no decision of this Court that such activities may be regulated where no part of the product is intended for interstate commerce or intermingled with the subjects thereof. We believe that a review of the course of decision under the Commerce Clause will make plain, however, that questions of the power of Congress are not to be decided by reference to any formula which would give controlling force to nomenclature such as "production" and "indirect" and foreclose consideration of the actual effects of the activity in question upon interstate commerce.

At the beginning Chief Justice Marshall described the federal commerce power with a breadth never yet exceeded. *Gibbons* v. *Ogden*, 9 Wheat. 1, 194-195. He made emphatic the embracing and penetrating nature of this power by warning that effective restraints on its exercise must proceed from political rather than from judicial processes. *Id.* at 197.

For nearly a century, however, decisions of this Court under the Commerce Clause dealt rarely with questions of what Con-

[15] Constitution, Article I, § 8, cl. 18.

[16] After discussing and affirming the cases stating that such activities were "local," and could be regulated under the Commerce Clause only if by virtue of special circumstances their effects upon interstate commerce were "direct," the opinion of the Court in Carter v. Carter Coal Co., 298 U. S. 238, 308, stated that: "The distinction between a direct and an indirect effect turns, not upon the magnitude of either the cause or the effect, but entirely upon the manner in which the effect has been brought about. . . . the matter of degree has no bearing upon the question here, since that question is not—What is the *extent* of the local activity or condition, or the *extent* of the effect produced upon interstate commerce? but—What is the *relation* between the activity or condition and the effect?" See also, cases cited *infra*, notes 17 and 21.

gress might do in the exercise of its granted power under the Clause and almost entirely with the permissibility of state activity which it was claimed discriminated against or burdened interstate commerce. During this period there was perhaps little occasion for the affirmative exercise of the commerce power, and the influence of the Clause on American life and law was a negative one, resulting almost wholly from its operation as a restraint upon the powers of the states. In discussion and decision the point of reference instead of being what was "necessary and proper" to the exercise by Congress of its granted power, was often some concept of sovereignty thought to be implicit in the status of statehood. Certain activities such as "production," "manufacturing," and "mining" were occasionally said to be within the province of state governments and beyond the power of Congress under the Commerce Clause.[17]

It was not until 1887 with the enactment of the Interstate Commerce Act[18] that the interstate commerce power began to exert positive influence in American law and life. This first important federal resort to the commerce power was followed in 1890 by the Sherman Anti-Trust Act[19] and, thereafter, mainly after 1903, by many others. These statutes ushered in new phases of adjudication, which required the Court to approach the interpretation of the Commerce Clause in the light of an actual exercise by Congress of its power thereunder.

When it first dealt with this new legislation, the Court adhered to its earlier pronouncements, and allowed but little scope to the power of Congress. *United States* v. *Knight*, 156 U. S. 1.[20] These earlier pronouncements also played an important part in several of the five cases in which this Court later held that Acts of Congress under the Commerce Clause were in excess of its power.[21]

---

[17] Veazie v. Moor, 14 How. 568, 573-574; Kidd v. Pearson, 128 U. S. 1, 20-22.

[18] 24 Stat. 379, 49 U. S. C. § 1, *et seq.*

[19] 26 Stat. 209, 15 U. S. C. § 1, *et seq.*

[20] See also, Hopkins v. United States, 171 U. S. 578; Anderson v. United States, 171 U. S. 604.

[21] Employers Liability Cases, 207 U. S. 463; Hammer v. Dagenhart, 247 U. S. 251; Railroad Retirement Board v. Alton R. Co., 295 U. S. 330; Schechter Corp. v. United States, 295 U. S. 495; Carter v. Carter Coal Co., 298 U. S. 238; cf. United States v. Dewitt, 9 Wall. 41; Trade Mark Cases, 100 U. S. 82; Hill v. Wallace, 259 U. S. 44; Heisler v. Thomas Colliery Co., 260 U. S. 245, 259-260; Oliver Iron Co. v. Lord, 262 U. S. 172, 178-179; Utah Power & Light Co. v. Pfost, 286 U. S. 165.

Even while important opinions in this line of restrictive authority were being written, however, other cases called forth broader interpretations of the Commerce Clause destined to supersede the earlier ones, and to bring about a return to the principles first enunciated by Chief Justice Marshall in *Gibbons* v. *Ogden*, *supra*.

Not long after the decision of *United States* v. *Knight*, *supra*, Mr. Justice Holmes, in sustaining the exercise of national power over intrastate activity, stated for the Court that "commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business." *Swift & Co.* v. *United States*, 196 U. S. 375, 398. It was soon demonstrated that the effects of many kinds of intrastate activity upon interstate commerce were such as to make them a proper subject of federal regulation.[22] In some cases sustaining the exercise of federal power over intrastate matters the term "direct" was used for the purpose of stating, rather than of reaching, a result;[23] in others it was treated as synonymous with "substantial" or "material;"[24] and in others it was not used at all.[25] Of late its use has been abandoned in cases dealing with questions of federal power under the Commerce Clause.

In the *Shreveport Rate Cases*, 234 U. S. 342, the Court held that railroad rates of an admittedly intrastate character and fixed by authority of the state might, nevertheless, be revised by the Federal Government because of the economic effects which they had

---

[22] Northern Securities Co. v. United States, 193 U. S. 197; Swift & Co. v. United States, *supra*; Loewe v. Lawlor, 208 U. S. 274; B. & O. R. Co. v. Interstate Commerce Commission, 221 U. S. 612; Southern Ry. Co. v. United States, 222 U. S. 20; Second Employers' Liability Cases, 223 U. S. 1; United States v. Patten, 226 U. S. 525.

[23] United Leather Workers v. Herkert Co., 265 U. S. 457, 471; cf. Apex Hosiery Co. v. Leader, 310 U. S. 469, 511; Di Santo v. Pennsylvania, 273 U. S. 34, 44 (dissent); Northern Securities Co. v. United States, 193 U. S. 197, 395; Standard Oil Co. v. United States, 221 U. S. 1, 66-69.

[24] In Santa Cruz Co. v. Labor Board, 303 U. S. 453, 466-467, Chief Justice Hughes said: "'direct' has been contrasted with 'indirect,' and, what is 'remote' or 'distant' with what is 'close and substantial'. Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as 'interstate commerce,' 'due process,' 'equal protection.'"

[25] B. & O. R. Co. v. Interstate Commerce Commission, 221 U. S. 612; Second Employers' Liability Cases, 223 U. S. 1; Interstate Commerce Commission v. Goodrich Transit Co., 224 U. S. 194.

upon interstate commerce. The opinion of Mr. Justice Hughes found federal intervention constitutionally authorized because of "matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of the conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance." *Id.* at 351.

The Court's recognition of the relevance of the economic effects in the application of the Commerce Clause exemplified by this statement has made the mechanical application of legal formulas no longer feasible. Once an economic measure of the reach of the power granted to Congress in the Commerce Clause is accepted, questions of federal power cannot be decided simply by finding the activity in question to be "production" nor can consideration of its economic effects be foreclosed by calling them "indirect." The present Chief Justice has said in summary of the present state of the law: "The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of power over it, as to make regulation of them appropriate means to the ~~ascertainment~~ attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce. . . . The power of Congress over interstate commerce is plenary and complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. . . . It follows that no form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress. Hence the reach of that power extends to those intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power." *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 119.

Whether the subject of the regulation in question was "production," "consumption," or "marketing" is, therefore, not material for purposes of deciding the question of federal power before us. That an activity is of local character may help in a doubtful case to determine whether Congress intended to reach it.[26] The same consideration might help in determining whether in the absence of Congressional action it would be permissible for the

[26] Cf. Federal Trade Commission v. Bunte Bros., 312 U. S. 349.

state to exert its power on the subject matter, even though in so doing it to some degree affected interstate commerce. But even if appellant's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce and this irrespective of whether such effect is what might at some earlier time have been defined as "direct" or "indirect."

The parties have stipulated a summary of the economics of the wheat industry. Commerce among the states in wheat is large and important. Although wheat is raised in every state but one, production in most states is not equal to consumption. Sixteen states on average have had a surplus of wheat above their own requirements for feed, seed, and food. Thirty-two states and the District of Columbia, where production has been below consumption, have looked to these surplus-producing states for their supply as well as for wheat for export and carryover.

The wheat industry has been a problem industry for some years. Largely as a result of increased foreign production and import restrictions, annual exports of wheat and flour from the United States during the ten-year period ending in 1940 averaged less than 10 per cent of total production, while during the 1920's they averaged more than 25 per cent. The decline in the export trade has left a large surplus in production which in connection with an abnormally large supply of wheat and other grains in recent years caused congestion in a number of markets; tied up railroad cars; and caused elevators in some instances to turn away grains, and railroads to institute embargoes to prevent further congestion.

Many countries, both importing and exporting, have sought to modify the impact of the world market conditions on their own economy. Importing countries have taken measures to stimulate production and self-sufficiency. The four large exporting countries of Argentina, Australia, Canada, and the United States have all undertaken various programs for the relief of growers. Such measures have been designed in part at least to protect the domestic price received by producers. Such plans have generally evolved towards control by the central government.[27]

[27] It is interesting to note that all of these have federated systems of government, not of course without important differences. In all of them wheat regulation is by the national government. In Argentina wheat may be purchased only from the national Grain Board. A condition of sale to the Board, which buys at pegged prices, is the producer's agreement to become subject

In the absence of regulation the price of wheat in the United States would be much affected by world conditions. During 1941 producers who cooperated with the Agricultural Adjustment program received an average price on the farm of about $1.16 a bushel as compared with the world market price of 40 cents a bushel.

Differences in farming conditions, however, make these benefits mean different things to different wheat growers. There are several large areas of specialization in wheat, and the concentration on this crop reaches 27 percent of the crop land, and the average harvest runs as high as 155 acres. Except for some use of wheat as stock feed and for seed, the practice is to sell the crop for cash. Wheat from such areas constitutes the bulk of the interstate commerce therein.

On the other hand, in some New England states less than one percent of the crop land is devoted to wheat, and the average harvest is less than five acres per farm. In 1940 the average percentage of the total wheat production that was sold in each state as measured by value ranged from 29 per cent thereof in Wisconsin to 90 per cent in Washington. Except in regions of large-scale production, wheat is usually grown in rotation with other crops; for a nurse crop for grass seeding; and as a cover crop to prevent soil erosion and leaching. Some is sold, some kept for seed, and a percentage of the total production much larger than in areas of specialization is consumed on the farm and grown for such purpose. Such farmers, while growing some wheat, may even find the balance of their interest on the consumer's side.

The effect of consumption of home-grown wheat on interstate commerce is due to the fact that it constitutes the most variable factor in the disappearance of the wheat crop. Consumption on

---

to restrictions on planting. See Nolan, Argentine Grain Price Guaranty, Foreign Agriculture (Office of Foreign Agricultural Relations, Department of Agriculture) May, 1942, pp. 185, 202. The Australian system of regulation includes the licensing of growers, who may not sow more than the amount licensed, and who may be compelled to cut part of their crops for hay if a heavy crop is in prospect. See Wright, Australian Wheat Stabilization, Foreign Agriculture (Office of Foreign Agricultural Relations, Department of Agriculture) September, 1942, pp. 329, 336. The Canadian Wheat Board has wide control over the marketing of wheat by the individual producer. 4 Geo. VI, c. 25, § 5. Canadian wheat has also been the subject of numerous Orders in Council. E. g., 6 Proclamations and Orders in Council (1942) 183, which gives the Wheat Board full control of sale, delivery, milling and disposition by any person or individual. See, also, Wheat Acreage Reduction Act, 1942, 6 Geo. VI, c. 10.

the farm where grown appears to vary in an amount greater than 20 per cent of average production. The total amount of wheat consumed as food varies but relatively little, and use as seed is relatively constant.

The maintenance by government regulation of a price for wheat undoubtedly can be accomplished as effectively by sustaining or increasing the demand as by limiting the supply. The effect of the statute before us is to restrict the amount which may be produced for market and the extent as well to which one may forestall resort to the market by producing to meet his own needs. That appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial. *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 606 *et seq.*; *United States* v. *Darby*, *supra*, at 123.

It is well established by decisions of this Court that the power to regulate commerce includes the power to regulate the prices at which commodities in that commerce are dealt in and practices affecting such prices.[28] One of the primary purposes of the Act in question was to increase the market price of wheat and to that end to limit the volume thereof that could affect the market. It can hardly be denied that a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions. This may arise because being in marketable condition such home-grown wheat overhangs the market and if induced by rising prices tends to flow into the market and check price increases. But if we assume that it is never marketed, it supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market. Home-grown wheat in this sense competes with wheat in commerce. The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon. This record leaves us in

[28] Swift & Co. v. United States, 196 U. S. 375; Stafford v. Wallace, 258 U. S. 495; Chicago Board of Trade v. Olsen, 262 U. S. 1; Coronado Coal Co. v. United Mine Workers, 268 U. S. 295; United States v. Trenton Potteries Co., 273 U. S. 392; Tagg Bros. & Moorhead v. United States, 280 U. S. 420; Standard Oil Co. of Indiana v. United States, 283 U. S. 163; Currin v. Wallace, 306 U. S. 1; Mulford v. Smith, 307 U. S. 38; United States v. Rock Royal Co-operative, *supra*; United States v. Socony-Vacuum Oil Co., 310 U. S. 150; Sunshine Anthracite Coal Co. v. Adkins, 310 U. S. 381; United States v. Darby, *supra*; United States v. Wrightwood Dairy Co., *supra*; Federal Power Commission v. Pipeline Co., 315 U. S. 575.

no doubt that Congress may properly have considered that wheat consumed on the farm where grown if wholly outside the scheme of regulation would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices.

It is said, however, that this Act, forcing some farmers into the market to buy what they could provide for themselves, is an unfair promotion of the markets and prices of specializing wheat growers. It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others. The conflicts of economic interest between the regulated and those who advantage by it are wisely left under our system to resolution by the Congress under its more flexible and responsible legislative process.[29] Such conflicts rarely lend themselves to judicial determination. And with the wisdom, workability, or fairness, of the plan of regulation we have nothing to do.

III.

The statute is also challenged as a deprivation of property without due process of law contrary to the Fifth Amendment, both because of its regulatory effect on the appellee and because of its alleged retroactive effect. The court below sustained the plea on the ground of forbidden retroactivity "or in the alternative that the equities of the case as shown by the record favor the plaintiff." 43 F. Supp. 1017, 1019. The validity of an Act of Congress is not to be refused application by the courts as arbitrary and capricious and forbidden by the Due Process Clause merely because it is deemed in a particular case to work an inequitable result.

Appellee's claim that the Act works a deprivation of due process even apart from its allegedly retroactive effect is not persuasive. Control of total supply, upon which the whole statutory plan is based, depends upon control of individual supply. Appellee's claim is not that his quota represented less than a fair share of the national quota, but that the Fifth Amendment requires that he be free from penalty for planting wheat and disposing of his crop as he sees fit.

---

[29] Cf. M'Culloch v. Maryland, 4 Wheat. 316, 413-415, 435-436; Gibbons v. Ogden, *supra* at 197; Stafford v. Wallace, 258 U. S. 495, 521; Chicago Board of Trade v. Olsen, 262 U. S. 1, 37; Helvering v. Gerhardt, 304 U. S. 405, 412.

We do not agree. In its effort to control total supply, the Government gave the farmer a choice which was, of course, designed to encourage cooperation and discourage non-cooperation. The farmer who planted within his allotment was in effect guaranteed a minimum return much above what his wheat would have brought if sold on a world market basis. Exemption from the applicability of quotas was made in favor of small producers.[30] The farmer who produced in excess of his quota might escape penalty by delivering his wheat to the Secretary or by storing it with the privilege of sale without penalty in a later year to fill out his quota, or irrespective of quotas if they are no longer in effect, and he could obtain a loan of 60 per cent of the rate for cooperators, or about 59 cents a bushel, on so much of his wheat as would be subject to penalty if marketed.[31] Finally, he might make other disposition of his wheat, subject to the penalty. It is agreed that as the result of the wheat programs he is able to market his wheat at a price "far above any world price based on the natural reaction of supply and demand." We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellant's burdens under the program outweigh his benefits. It is hardly lack of due process for the Government to regulate that which it subsidizes.

The amendment of May 26, 1941 is said to be invalidly retroactive in two respects: first, in that it increased the penalty from 15 cents to 49 cents a bushel; secondly, in that by the new definition of "farm marketing excess" it subjected to the penalty wheat which had theretofore been subject to no penalty at all, i. e., wheat not "marketed" as defined in the Act.

It is not to be denied that between seed time and harvest important changes were made in the Act which affected the desirability and advantage of planting the excess acreage. The law as it stood when the appellee planted his crop made the quota for his farm the normal or the actual production of the acreage allotment, whichever was greater, plus any carry-over wheat that he could have marketed without penalty in the preceding marketing

[30] § 7 of the amendment of May 26, 1941 provided that a farm marketing quota should not be applicable to any farm on which the acreage planted to wheat is not in excess of fifteen acres. When the appellee planted his wheat the quota was inapplicable to any farm on which the normal production of the acreage planted to wheat was less than 200 bushels. § 335(d) of the Agricultural Adjustment Act of 1938, as amended by 54 Stat. 232.

[31] §§ 6, 10(c) of the amendment of May 26, 1941.

year.[32] The Act also provided that the farmer who, while quotas were in effect, marketed wheat in excess of the quota for the farm on which it was produced should be subject to a penalty of 15 cents a bushel on the excess so marketed.[33] Marketing of wheat was defined as including disposition "by feeding (in any form) to poultry or livestock which, or the products of which, are sold, bartered, or exchanged, ..."[34] The amendment of May 26, 1941, made before the appellee had harvested the growing crop, changed the quota and penalty provisions. The quota for each farm became the actual production of acreage planted to wheat less the normal or the actual production, whichever was smaller, of any excess acreage.[35] Wheat in excess of this quota, known as the "farm-marketing excess" and declared by the amendment to be "regarded as available for marketing" was subjected to a penalty fixed at 50 per cent of the basic loan rate for cooperators,[36] or 49 cents, instead of the penalty of 15 cents which obtained at the time of planting. At the same time there was authorized an increase in the amount of the loan which might be made to non-cooperators such as the appellee upon wheat which "would be subject to penalty if marketed" from about 34 cents per bushel to about 59 cents.[37] The entire crop was subjected by the amendment to a lien for the payment of the penalty.

The penalty provided by the amendment can be postponed or avoided only by storing the farm marketing excess according to regulations promulgated by the Secretary or by delivering it to him without compensation; and the penalty is incurred and becomes due on threshing.[38] Thus the penalty was contingent upon

[32] § 335(c), as amended July 26, 1939, 53 Stat. 1126, 7 U. S. C. § 1335(c).

[33] § 339, 7 U. S. C. § 1339.

[34] § 301(b)(6)(A), (B), as amended July 2, 1940, 54 Stat. 727, 7 U. S. C. § 1301(b)(6)(A), (B).

[35] By an amendment of December 26, 1941, 55 Stat. 872, effective as of May 26, 1941, it was provided that the farm marketing excess should not be larger than the amount by which the actual production exceeds the normal production of the farm wheat-acreage allotment, if the producer establishes such actual production to the satisfaction of the Secretary, provision being made for adjustment of the penalty in the event of a downward adjustment in the amount of the farm marketing excess.

[36] §§ 2, 3 of the amendment of May 26, 1941.

[37] § 302(b) had provided for a loan to non-cooperators of 60% of the basic loan rate for cooperators, which in 1940 was 64¢. See United States Department of Agriculture Press Release, May 20, 1940. The same percentage was employed in § 10(c) of the amendment of May 26, 1941, and the increase in the amount of the loan is the result of an increase in the basic loan rate effected by § 10(a) of the amendment.

[38] Wheat—507, § 728.251(b), 6 Federal Register 2695, 2701.

an act which appellee committed not before but after the enactment of the statute, and had he chosen to cut his excess and cure it or feed it as hay, or to reap and feed it with the head and straw together, no penalty would have been demanded. Such manner of consumption is not uncommon. Only when he threshed and thereby made it a part of the bulk of wheat overhanging the market did he become subject to penalty. He has made no effort to show that the value of his excess wheat consumed without threshing was less than it would have been had it been threshed while subject to the statutory provisions in force at the time of planting. Concurrently with the increase in the amount of the penalty Congress authorized a substantial increase in the amount of the loan which might be made to cooperators upon stored farm marketing excess wheat. That appellee is the worse off for the aggregate of this legislation does not appear; it only appears that if he could get all that the Government gives and do nothing that the Governments asks, he would be better off than this law allows. To deny him this is not to deny him due process of law. Cf. *Mulford* v. *Smith*, 307 U. S. 38.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.